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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,935	07/27/2001	Vittorio Castelli	YOR9-2001-0461 (8728-524)	8782
7590	02/18/2005		EXAMINER HIRL, JOSEPH P	
Frank Chau F. CHAU & ASSOCIATES, LLP Suite 501 1900 Hempstead Turnpike East Meadow, NY 11554			ART UNIT 2121	PAPER NUMBER
DATE MAILED: 02/18/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/916,935	<b>Applicant(s)</b> CASTELLI ET AL.	
	<b>Examiner</b> Joseph P. Hirl	<b>Art Unit</b> 2121	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 July 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,6-9,12-14,20,21,24 and 27-40 is/are rejected.
- 7) ☒ Claim(s) 2-5;10,11,15-19,22,23,25 and 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Claims 1-40 are pending in this application.

### ***Claim Objections***

2. Claims 2-5, 10, 11, 15-19, 22, 23, 25 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 6-9, 12-14, 20, 21, 24, 27-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Sweet et al (U.S. Patent 6,836,800 referred to as **Sweet**).

**Claim 1**

Sweet anticipates monitoring, over a period of time, a contemporaneous resource utilization and a number of active devices to obtain monitored values of the contemporaneous resource utilization and the number of active devices (**Sweet**, c 2, l 5-20; Fig. 8-15); and predicting the subsequent resource utilization, based upon the monitored values of the contemporaneous resource utilization and the number of active devices (**Sweet**, c 3, l 25-31; Examiner's Note (EN): the number of active devices is integrated into the system operation).

**Claim 6**

Sweet anticipates the step of managing a resource capacity of the computer system, based upon the predicted subsequent resource utilization (**Sweet**, c 3, l 32-40).

**Claim 7**

Sweet anticipates the step of rejuvenating the computer software, based upon the predicted subsequent resource utilization (**Sweet**, c 3, l 32-40; EN: planned upgrades include software rejuvenation).

**Claim 8**

Sweet anticipates dynamically allocating at least one resource of the computer system, based upon the predicted subsequent resource utilization (**Sweet**, c 2, l 5-20; EN: adaptive changes achieve dynamic allocating).

**Claim 9**

Sweet anticipates identifying any of the plurality of devices that are relevant to a monitored resource (**Sweet**, c 2, l 5-34); and restricting at least one subsequent operation of the computer system that corresponds to the monitored resource to use only devices identified as relevant to the monitored resource from among the plurality of devices (**Sweet**, c 2, l 5-34; EN: adaptive changes selects relevant devices).

**Claims 12, 27, 35**

Sweet anticipates dividing the plurality of devices into device classes (**Sweet**, c 10, l 9-19); and counting the number of active devices in each of the device classes (**Sweet**, c 10, l 9-19; EN: map application contains the number of active devices).

**Claims 13, 28**

Sweet anticipates fitting a prediction model for a monitored resource, wherein prediction model of the prediction model depend on the number of active devices in each of the device classes (**Sweet**, c 10, l 9-19; EN: map application depends on network devices) ).

**Claims 14, 29**

Sweet anticipates the step of computing a prediction model for the number of active devices in each of the device classes (**Sweet**, c 10, l 9-19; EN: such as the key network devices).

**Claims 20, 30, 37**

Sweet anticipates a program storage device readable by machine, tangibly embodying a program of instructions executable by the machine to perform said

method steps (**Sweet**, c 3, l 25-40).

**Claim 21**

Sweet anticipates monitoring, over a period of time, resource utilization and a number of active devices to obtain monitored values of the resource utilization and the number of active devices (**Sweet**, c 2, l 5-20; Fig. 8-15); and identifying resource saturation, based upon the monitored values of the resource utilization and the number of active devices (**Sweet**, c 4, l 42-58; EN: signature detection establishes monitored values for the active devices).

**Claims 24, 36**

Sweet anticipates identifying any of the plurality of devices that are relevant to a monitored resource (**Sweet**, c 2, l 5-20); and restricting at least one subsequent operation of the computer system that corresponds to the monitored resource to use only devices identified as relevant to the monitored resource from among the plurality of devices (**Sweet**, c 2, l 5-20; EN: such as are necessary to achieve automatic adaptation).

**Claims 31, 38, 39, 40**

Sweet anticipates monitoring, over a period of time, a resource utilization and a number of active devices to obtain monitored values of the resource utilization and the number of active devices (**Sweet**, c 2, l 5-20; Fig. 8-15); and predicting the effects of adding the new device, based upon the monitored values of the resource utilization and the number of active devices (**Sweet**, c 2, l 5-20; EN: such is automatic adaptation).

**Claim 32**

Sweet anticipates selecting a monitored resource (**Sweet**, c 2, l 5-20); and predicting the effects of adding the new device with respect to the selected monitored resource, based upon the monitored values of the resource utilization and the number of active devices (**Sweet**, c 2, l 5-20; EN: such is the function of automatic adaptation).

**Claim 33**

Sweet anticipates constructing a first prediction model of a distribution of the number of active devices (**Sweet**, c 2, l 5-20; EN: such as performance thresholds for the network); and modifying the first prediction model to produce a modified prediction model of the distribution of the number of active devices that accounts for the new device (**Sweet**, c 2, l 5-20; EN: such is the function of automatic adaptation).

**Claim 34**

Sweet anticipates computing a first prediction model for the selected monitored resource, based upon the first prediction model of the distribution of the number of active devices (**Sweet**, c 2, l 5-34; EN: such are application priorities); producing a first prediction of the selected monitored resource using the first prediction model for the selected monitored resource (**Sweet**, c 2, l 5-34; EN: such are application priorities); computing a modified prediction model for the selected monitored resource to account for the new device, based upon the modified prediction model of the distribution of the number of active devices (**Sweet**, c 2, l 5-34; EN: such as automatic adaptation); producing a second prediction of the selected monitored resource, based

upon the modified prediction model for the selected monitored resource (**Sweet**, c 2, I 5-34; EN: trade-offs); and comparing the first prediction and the second prediction of the selected monitored resource to evaluate the effects of adding the new device (**Sweet**, c 2, I 5-34; EN: trade-offs).

### ***Examination Considerations***

5. The claims and only the claims form the metes and bounds of the invention.

"Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. *In re Prater*, 415 F.2d, 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969)" (MPEP p 2100-8, c 2, I 45-48; p 2100-9, c 1, I 1-4). The Examiner has full latitude to interpret each claim in the broadest reasonable sense. Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

6. Examiner's Notes are provided to assist the applicant to better understand the nature of the prior art, application of such prior art and, as appropriate, to further indicate other prior art that maybe applied in other office actions. Such comments are entirely consistent with the intent and spirit of compact prosecution. However, and



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unless otherwise stated, the Examiner's Notes are not prior art but a link to prior art that one of ordinary skill in the art would find inherently appropriate.

7. Examiner's Opinion: Paras 5. and 6. apply. The Examiner has full latitude to interpret each claim in the broadest reasonable sense.

### ***Conclusion***

8. The prior art of record and not relied upon is considered pertinent to applicant's disclosure.

- Friedrich et al, U.S. Patent 5,276,877
- Grumann, U.S. Pub. 2003/005024
- Smith et al, U.S. Patent 6,785,015

9. Claims 2-5, 10, 11, 15-19, 22, 23, 25 and 26 are objected to. Claims 1, 6-9, 12-14, 20, 21, 24 and 27-40 are rejected.

### ***Correspondence Information***

Any inquiry concerning this information or related to the subject disclosure should be directed to the Examiner, Joseph P. Hirl, whose telephone number is (571) 272-3685. The Examiner can be reached on Monday – Thursday from

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6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anthony Knight can be reached at (571) 272-3687.

Any response to this office action should be mailed to:

Commissioner of Patents and Trademarks,

Washington, D. C. 20231;

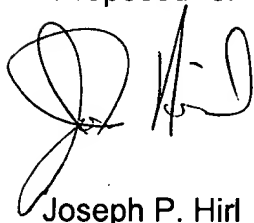
or faxed to:

(703) 872-9306 (for formal communications intended for entry);

or faxed to:

(571) 273-3685 (for informal or draft communications with notation of

"Proposed" or "Draft" for the desk of the Examiner).

A handwritten signature in black ink, appearing to be 'J. P. Hirl', written over a horizontal line.

Joseph P. Hirl

February 16, 2005